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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,744	08/29/2003	John M. Lown	FL02-N54	1764

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EXAMINER
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SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/652,744

Applicant(s)

LOWN ET AL.

Examiner

James N. Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4, 6-7, 9-12 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 3, 5, 8 and 13-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

Art Unit: 3727

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4, 6-7 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paull et al. US 2,889,087 in view of Montgomery US 5,785,196.

Paull '087 teaches a plastic cap comprising an annular cap body (5) and a lid (10), secured by engagement between flange (9) and cavity (11).

Paull '087 does not teach the cap having mating threads with a threaded container.

Montgomery '196 teaches, between the embodiment of figure 8 and figure 10, teaches resilient snap connections and threaded connections are mechanically equivalent means for securing lids to containers.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the connection between the cap and container of Paull '087, providing a threaded connection in place of the snap connection therein, motivated by the teachings of Montgomery '196 that the means for fastening a cap to a container are mechanical equivalents.

Furthermore, Paull '087 does not teach the downwardly extending flange being spaced inwardly from the peripheral rim.

McNab '434 teaches it is known to space the downwardly extending lid flange inwardly from the peripheral rim of the container. Though no explicit reason is given, the spacing of the flange in the lid gives it a greater degree of flexibility, than that of Paull '087, which will allow it to resiliently deflect when receiving the cap sealing bead.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Paull '087, spacing the downwardly extending flange inward of the lid

Art Unit: 3727

periphery, as taught by McNab '434, motivated by the benefit of providing the flange a greater degree of flexibility when snapping over the closure cap sealing flange.

Regarding claim 2, Paull '087, as modified, does not teach the angles of the sealing flanges. However, Examiner notes the sealing flanges appear to be within the claimed angular ranges.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the cap sealing flange 8 to 24 degrees, and the lid sealing flange to within 10 to 18 degrees. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 6-7 and 10, Paull '087 does not teach the device formed of polypropylene, although the reference does teach forming the cap of, "slightly resilient plastic, such as polyethylene or the like" (emphasis added), in col. 1, last line, through col. 2, line 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the closure cap of Paull '087 of polypropylene, because the reference teaches forming the cap of resilient plastics. Furthermore, Examiner notes it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 11, Paull '087 does not teach the size of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container and closure of Paull '087 to a diameter of at least 53 mm, or any other size. Examiner notes a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

3. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paull et al. US 2,889,087 in view of Montgomery US 5,785,196 as applied above to claim 1, and further in view of Quinn et al. US 5,582,314.

Regarding claim 17, Paull '087 does not teach a downwardly extending tongue and an outwardly extending finger. However, Paull '087 teaches a finger tab (22) to help a user open the lid.

Art Unit: 3727

Quinn '314 teaches a downwardly extending tongue (50) and an outwardly extending finger (55).

It would have obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Paull '087, providing a downwardly extending tongue and an outwardly extending finger, as taught by Quinn '314, because such is an equivalent means for providing an opening tab to assist a user in opening the container.

Regarding claims 18-19, Paull '087 teaches loops (8) with diameters smaller than the pintles (14).

4. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Paull et al. US 2,889,087 in view of Montgomery US 5,785,196 as applied above to claim 1, and further in view of Gilmour US 5,078,291.

Paull '087, as modified, does not teach a removable handle.

Gilmour '291 teaches a removable handle (85) to be fixed to a closure cap (10).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Paull '087, providing slots to removably receive a handle, as taught by Gilmour '291, motivated by the option of providing a carrying handle to the cap.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Allowable Subject Matter***

6. Claims 3, 5, 8 and 13-16 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3727

**Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

See attached PTO-892, citing references teaching various closures.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

  
NATHAN J. NEWHOUSE  
PRIMARY EXAMINER  
6/27/05